

## WAMPLER v. SHIPLEY.

## POWERS OF A TRUSTEE TO SELL PROPERTY.

A trustee appointed to sell property cannot be allowed to abandon any right arising out of the sale after it has been ratified; or to dispose of the purchase money in any way without the previous sanction of the Court.

THIS was a creditor's bill filed on the 14th of October, 1813, upon which on the 25th of April, 1816, a decree was passed directing a sale of the real estate of Duncan Shipley, deceased, to pay his debts. The trustee reported several sales which were ratified. And by a further report, filed on the 21st instant, and now submitted for the order of the Chancellor, the trustee states, that as a part of the real estate of the late Duncan Shipley, he had heretofore sold a small piece of land supposed to contain ten acres, for three dollars and a quarter an acre, amounting to \$33.31 $\frac{1}{4}$ , to Seth Warfield, who gave his single bill with two sureties for the payment of the purchase money; that the sale had been ratified; and after the purchase money became due, he had sued Warfield and his sureties for the debt, by warrant before a justice of the peace; who upon hearing the case was satisfied, as this trustee was informed and believes, that there was either no land at all included in the certificate of sale given by said trustee, or at most not more than three or four acres to which there was any title or claim in said trustee; and, therefore, there was, in his opinion, a total failure of consideration, and he gave judgment of *non pros.* against this trustee, with costs; which this trustee paid, amounting to one dollar. Whereupon the trustee prayed to be allowed the costs so paid to him; that the sale be rescinded, &c., \*especially as he, this trustee, inquired into the facts and circumstances, and was 183 satisfied as to the truth of there being almost a total deficiency of the land sold.

BLAND, C., 28th January, 1831.—This case involves so small an amount of property, that I have felt strongly inclined to make the cheapest and most summary disposition of it, that the established course of the Court would permit. But even in an apparently trifling matter, I cannot allow myself to depart from general rules, where reason and all my experience here have demonstrated that they should be rigidly adhered to, as well for the security of suitors as for saving the Court itself from confusion and difficulty in the discharge of its duties.

This Court, in ordering a sale of property, never warrants a title to the vendee. If there be any fraud, mistake, or misapprehension in the sale, this Court itself, and none other, grants the relief;